

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

CAROL ANN AGSTER, personal representative of the Estate of CHARLES J. AGSTER, III, deceased; CHARLES J. AGSTER, JR., and CAROL ANN AGSTER, surviving parents of CHARLES J. AGSTER, III,	CV 02-1686-PHX-JAT
Plaintiffs,	<b>ORDER</b>
vs.	
Betty Lewis, et al.,	
Defendants.	

Pending before the Court is Nurse Betty Lewis' Motion for Remittitur (Doc. #660). Nurse Lewis seeks a reduction in the punitive damages award against her from \$2,000,000 to \$540,000. Plaintiffs respond and argue that the Court cannot grant Nurse Lewis the relief she seeks because it would not affect the amount Plaintiffs will receive. Plaintiffs go on to state that Plaintiffs and Nurse Lewis have entered into a settlement agreement, Plaintiffs have been paid, and no order from the Court will change this result. Therefore, Plaintiffs conclude that any order the Court would issue would constitute an advisory opinion.

Nurse Lewis replies and does not contest these facts. However, she maintains that she has a due process right to have the punitive damages award against her considered and reduced. Specifically, she argues that she will have consequences from the Court's order, including her future ability to obtain employment and her future ability to obtain malpractice insurance. Nurse Lewis does not dispute, however, Plaintiffs' argument that any order of this

1 Court will not affect the outcome of the litigation between Plaintiffs and Nurse Lewis. *See*  
2 Nurse Lewis' Reply (Doc. #727), footnote 1 and footnote 3.

3 Based on this state of the record, the Court agrees with Plaintiffs that any order this  
4 Court would issue on the merits of whether the punitive damages assessed against Nurse  
5 Lewis violated her due process rights would be an advisory opinion. As Plaintiffs note, the  
6 Court of Appeals has held, "[w]here parties enter into a settlement that resolves all  
7 outstanding disputes, we are unable to grant effective relief and the case becomes moot."  
8 *DHX, Inc. v. Allianz AGF MAT, Ltd.*, 425 F.3d 1169, 1174 (9<sup>th</sup> Cir. 2005) (J. Beezer  
9 concurring).

10 The Court finds any disputes between Nurse Lewis and Plaintiffs to be moot as a  
11 result of their settlement agreement. To the extent Nurse Lewis had further individual  
12 interests in the case beyond those addressed by the settlement agreement, her rights to pursue  
13 those interests would have had to have been preserved in the settlement agreement and they  
14 were not.<sup>1</sup>

15 Finally, the Court is unpersuaded by Nurse Lewis' argument that the settlement  
16 agreement is "illegal and void" on public policy grounds if the agreement precludes her from  
17 asserting a due process challenge to the jury's punitive damages award. Any time parties  
18 settle a case before trial, they wave a constitutional right to trial by jury; this fact does not  
19 make all settlement agreements void on public policy grounds. In other words, the fact that  
20 a settlement agreement settles away rights a party would otherwise have, even constitutional  
21 rights, does not make the agreement void for public policy reasons. Moreover, Nurse Lewis  
22 is not trying to void the agreement, which would be the remedy if the agreement violated  
23 public policy; instead she is trying to challenge the collateral consequences of the agreement.  
24 Thus, in addition to finding the settlement agreement is enforceable, the Court finds the  
25 remedy Nurse Lewis seeks to be inappropriate even if the agreement was void.

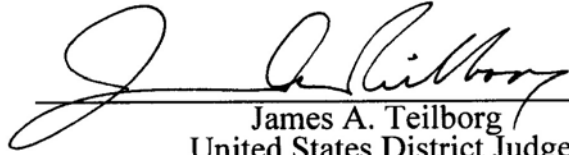
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27 <sup>1</sup> And, even to the extent a right to challenge an award was preserved in the settlement  
28 agreement, it would still have had to present an actual case or controversy before this Court.

1 Accordingly,

2 **IT IS ORDERED** that Nurse Lewis' Motion for Remittitur (Doc. #660) is denied.

3 DATED this 22<sup>nd</sup> day of November, 2006.

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7 James A. Teilborg  
8 United States District Judge  
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